

1 THE WITNESS: I want to clarify
2 the question. Unless you want me to wait --

3 JUDGE SIPPEL: No, no, no, no, I
4 just -- well, let's see if you can answer the
5 question.

6 BY MR. TOSCANO:

7 Q Do you see where in the definition
8 of coverage area rating, Nielsen says:
9 "Coverage area rating, the estimate of the
10 size of the audience relative to the total
11 number of homes or people that can receive
12 this channel. If coverage area ratings are
13 used for each individual cable network, the
14 coverage area rating for one cable network
15 cannot be compared to another cable network's
16 coverage area rating, or a broadcast network
17 rating. Only total U.S. ratings or audience
18 projections, estimated number of households or
19 persons can be compared between and among
20 networks." Do you see that?

21 A Yes, I see that.

22 Q And it's your testimony you've

1 never seen that before. Correct?

2 A That's what I wanted to clarify.

3 Q Yes or no?

4 A You asked me that before you
5 showed me the document.

6 Q Okay.

7 A Now that I've seen the document,
8 it is a definition, it's a glossary document.
9 I have seen Neilsen glossary documents before.
10 I cannot -- I never remember seeing this
11 particular definition, but I have seen
12 glossaries like this from Neilsen.

13 Q And you just don't recall this
14 particular guidance warning against the use of
15 coverage area ratings to compare cable
16 networks. Right?

17 A No. In fact, I find it contrary
18 to massive practice in the industry, so I'm
19 surprised that it would say this, where a
20 Neilsen -- when I call them and say why are
21 you saying that when you published it yourself
22 that way.

1 Q But isn't it true that a client
2 can use a coverage area rating to compare its
3 own -- a client that is a cable network can
4 use a coverage area rating to compare its own
5 ratings across time, for example. Correct?

6 A Yes, across time. You can do it
7 anyway, you can do it across networks, or
8 across time for a given network.

9 Q Mr. Brooks, in your testimony, I'd
10 like to direct your attention to page 11,
11 Paragraph 22, where you analyzed what you call
12 top rate events on both Tennis Channel and
13 Golf Channel. Do you see that?

14 A Yes.

15 JUDGE SIPPEL: What page are you
16 on, sorry?

17 MR. TOSCANO: I'm sorry, it's page
18 11, Paragraph 22.

19 JUDGE SIPPEL: Got it.

20 MR. TOSCANO: Okay. And I'm
21 directing to the first sentence where he's
22 talking about -- where he's opining on the top

1 50 rated events on both Golf Channel and
2 Tennis Channel.

3 BY MR. TOSCANO:

4 Q Now, in selecting the Golf Channel
5 events that you used in your analysis, you
6 didn't care whether or not the events that you
7 selected were, in fact, the highest rated
8 events on Golf Channel. Right?

9 A I did want the -- what we believe
10 is the universe would be the highest rated,
11 the marquis or anchor events, I think as was
12 used yesterday, events on both networks. So,
13 I asked the Tennis Channel what were their top
14 events overall, and what were the top events
15 for their competitor. And then, as I did with
16 everything I got from the Tennis Channel, I
17 then gave that a check of my own from what I
18 know of those networks. I chose a fairly large
19 number of events, over 200 I believe.

20 So, yes, I was concerned that they
21 would be the top events, the marquis or anchor
22 events, whatever you want to call them for the

1 networks in question, if that's what your
2 question is.

3 Q Mr. Brooks, do you remember back
4 in early March I took your deposition in
5 Washington, D.C.?

6 A Yes.

7 Q You came down from Connecticut, I
8 came down from New York, and I asked --

9 A Why couldn't it have been in the
10 middle?

11 Q I was wondering the same thing
12 myself.

13 JUDGE SIPPEL: You could have done
14 it on Staten Island.

15 (Laughter.)

16 BY MR. TOSCANO:

17 Q And in that deposition you
18 testified under oath. Correct?

19 A Yes.

20 Q And you told the truth throughout
21 that deposition. That's your testimony?

22 A To the best of my ability.

1 MR. TOSCANO: Your Honor, may I
2 approach?

3 JUDGE SIPPEL: You may.

4 MR. TOSCANO: This is the
5 deposition. I only have three copies of the
6 whole deposition. It's already been marked as
7 Exhibit 349.

8 JUDGE SIPPEL: We have it up here.

9 MR. TOSCANO: Okay. Do you guys
10 have your --

11 MR. SCHMIDT: Could you tell me
12 what pages you're about to direct -

13 MR. TOSCANO: Yes. I'm about to
14 direct his attention to page 193. Does anyone
15 else need a copy?

16 JUDGE SIPPEL: I probably ought to
17 see what the contents are.

18 MR. TOSCANO: I'm sorry. Your
19 Honor, I forgot.

20 JUDGE SIPPEL: Thank you.

21 MR. TOSCANO: I don't want to make
22 this a trick question.

1 BY MR. TOSCANO:

2 Q I'm going to direct your attention
3 to page 193.

4 JUDGE SIPPEL: Do I get a pen with
5 this? Is this --

6 MR. SCHMIDT: Your Honor, we don't
7 think there is an inconsistency. He's about to
8 try to impeach the witness. We don't think
9 there's an inconsistency here, but we don't
10 object to him reading it.

11 JUDGE SIPPEL: That takes the
12 drama out of it.

13 (Laughter.)

14 MR. CARROLL: It tries to take --

15 (Simultaneous speech.)

16 BY MR. TOSCANO:

17 Q We're on page 193.

18 A Thank you.

19 Q Do you remember at your deposition
20 when I asked you the following question, and
21 you gave the following answer. "Question: Did
22 you care whether or not the events from Golf

1 Channel that you selected were, in fact, the
2 highest rated events on Golf Channel? Answer:
3 No. Actually, we started with the events
4 themselves, and then found out what the
5 ratings for them were."

6 A Yes, I don't think that's
7 inconsistent with what I said.

8 Q Right. So, you agree that you
9 didn't care whether or not the events you
10 selected were, in fact, the highest rated
11 events on Golf Channel. Right?

12 A What I meant by that is we didn't
13 calculate the ratings first before identifying
14 events. We identified the events first, and
15 calculated the -- but in choosing the events
16 we were looking for events which were high
17 profile events to begin with. So, it's a
18 matter of order.

19 MR. TOSCANO: Your Honor, I'd like
20 to use another exhibit. May I approach?

21 JUDGE SIPPEL: Certainly.

22 MR. TOSCANO: This has been marked

1 as Comcast Exhibit 924. It is not yet in
2 evidence.

3 (WHEREUPON, THE AFOREMENTIONED
4 DOCUMENT WAS MARKED COMCAST
5 EXHIBIT 924 FOR IDENTIFICATION)

6 JUDGE SIPPEL: Different shade of
7 green. It must be the Irish --

8 (Laughter.)

9 BY MR. TOSCANO:

10 Q Mr. Brooks, do you recognize
11 what's been marked as Comcast Exhibit 924 as
12 the backup for your top rated events analysis
13 for the first three quarters of 2009?

14 A It certainly -- I don't recognize
15 the exact layout that I'm seeing here, but it
16 certainly looks like the data that I used.

17 Q And in fairness, this was produced
18 to us in native format, so this is a printout
19 of the spreadsheet. Does this look like a
20 printout of the spreadsheet that you used as
21 backup?

22 A It appears to be. What I was

1 working with isn't in color, but I assume it's
2 the same thing.

3 Q And this was provided to you by
4 Tennis Channel. Right?

5 A Under my supervision, yes.

6 Q Okay. And I'd like to direct your
7 attention to the third page. Do you see that?

8 A Yes.

9 Q And this page shows the PGA events
10 for the first nine months of 2009 that you
11 used in your top rate events analysis.
12 Correct?

13 A I would have to go back and
14 compare one to the other, but it looks like it
15 is.

16 Q Okay. And, in fact, this list of
17 PGA events is incomplete. Correct?

18 A I don't know that.

19 Q You didn't check it at the time
20 that Tennis Channel provided it to you?

21 A I didn't check to see -- well, I
22 didn't check to see if there were additional

1 lower rated events. I believe they calculated
2 all PGA, didn't they?

3 Q Was it your testimony that they
4 calculated all PGA events?

5 A That was my understanding, yes.
6 That was a very long list of PGA events of
7 varying rating levels.

8 Q Would you be surprised to learn
9 that they didn't include all PGA events?

10 A I would say neither one way or the
11 other. The reason I say that is because you're
12 using the term PGA events. I'm not sure -- I
13 know the major PGA events, obviously, but in
14 terms of what is considered a PGA event, and
15 what is not considered a PGA event, I do not
16 consider myself an expert in that. I just
17 wanted marquis events, principal core events.
18 So, if something else happens to be called
19 PGA, maybe it's Junior PGA, or maybe it's
20 Children's PGA, I don't know what it is, there
21 could be something out there that I'm not
22 familiar with, which wouldn't be relevant to

1 my analysis, which might carry the moniker
2 PGA. So, I want to be careful in answering
3 that, that there is -- that I'm an expert in
4 PGA.

5 JUDGE SIPPEL: Well, do you know
6 the difference between, I guess, a qualifying
7 event and a championship event?

8 THE WITNESS: Oh, yes.

9 JUDGE SIPPEL: These are not
10 qualifying events, I take it.

11 THE WITNESS: I believe they may
12 include -- again, it wasn't a distinction that
13 I looked at, but I believe they could be both.

14 BY MR. TOSCANO:

15 Q Let me put it this way. If an
16 event was on the PGA tour schedule, you want
17 it to be included in this chart. Correct?

18 A No, what I wanted was the
19 principal events on both channels I was
20 comparing.

21 Q And that's what -- you told the
22 Tennis Channel that you wanted only the

1 principal PGA events.

2 A Yes. Moreover, I wanted them to
3 pull enough of those events so it would be a
4 superset, if you will. It would be a much
5 longer list than the list I was eventually
6 going to use. I wanted to be able to cull out
7 minor events there.

8 Q Because you wanted to make sure
9 you had the top rated events. Right?

10 A On both networks. That's right.

11 MR. TOSCANO: Your Honor, may I
12 approach?

13 JUDGE SIPPEL: Certainly.

14 MR. TOSCANO: This exhibit has
15 been marked as Comcast --

16 JUDGE SIPPEL: Are we moving that
17 into evidence?

18 MR. TOSCANO: Can I clean this all
19 up at the end?

20 JUDGE SIPPEL: You certainly may.

21 MR. TOSCANO: Thank you.

22 BY MR. TOSCANO:

1 Q Mr. Brooks, in connection with
2 your top rated events analysis, where you were
3 looking to get the top rated PGA events, did
4 you look at a PGA tour schedule?

5 MR. SCHMIDT: Mr. Toscano, can you
6 help --

7 MR. TOSCANO: Yes. This is from
8 the PGA Tour website.

9 MR. SCHMIDT: Thank you.

10 JUDGE SIPPEL: PGA Tour. Oh, I
11 see. Thank you. I've got it.

12 THE WITNESS: Am I looking at
13 this?

14 MR. TOSCANO: Please.

15 BY MR. TOSCANO:

16 Q I'm just asking before you look at
17 that, did you before you, or as part of your
18 analysis of top rated PGA events actually look
19 at a schedule of the PGA Tour for 2009?

20 A No.

21 Q Okay. And had you looked at it,
22 you would have seen that, for example, the FBR

1 Open that was carried on the Tennis Channel in
2 February of 2009 was not on the list of PGA
3 Tour events, I'm sorry, on the Golf Channel.
4 Let me clean that up.

5 JUDGE SIPPEL: Back up.

6 BY MR. TOSCANO:

7 Q Had you looked at the PGA Tour
8 schedule --

9 A Yes.

10 Q -- when you did this analysis, you
11 would have seen that the FBR Open that was
12 broadcast in February of 2009 --

13 A Could you direct me where I'm
14 looking?

15 Q Yes. The first -- the one, two,
16 three, fourth --

17 A So, on this.

18 Q -- line of the PGA Tour schedule.

19 A Yes, I see that.

20 Q Had you checked this schedule when
21 you were doing the analysis, you would notice
22 that the FBR Open was not on the list of PGA

1 events that Tennis Channel compiled for you.

2 Correct?

3 A If I had seen -- I don't know what
4 the context of this document is, or what it's
5 supposed to represent --

6 JUDGE SIPPEL: You are now --

7 MR. TOSCANO: Yes.

8 THE WITNESS: This document shows
9 something they call an FBR Open on the date,
10 January 26th, and there's nothing on this list
11 by that name, although I know the names of
12 some things are expressed differently in
13 different places. So, that little name does
14 not appear here, but that is something that I
15 would have to resolve. I don't know if it's
16 here or not.

17 BY MR. TOSCANO:

18 Q But had you checked the PGA Tour
19 schedule when you were doing this analysis,
20 you would have had the opportunity to resolve
21 that. Right?

22 A Well, as I said, I wanted a very

1 long list of events. I wasn't, necessarily,
2 focusing on the FBR Open, or specific events.

3 Q Okay.

4 A I wanted a representative long
5 list which I could reduce to a top rated
6 number.

7 Q And had you checked the PGA Tour
8 schedule when you were doing this analysis,
9 you would also have noticed that the AT&T
10 Pebble Beach National Pro Am, which was
11 broadcast on the Golf Channel in February, was
12 also not on the list that the Tennis Channel
13 provided to you. Correct?

14 A It seems to me that -- I'm not
15 sure. I thought Pebble Beach -- it may not be
16 on this sheet, but was there, simply because
17 it's not only PGA events, I believe there are
18 some other events, too. So, again, I'm a
19 little worried about this representation by
20 name and comparing it with this representation
21 by name, whether, in fact, they are the same
22 or not.

1 JUDGE SIPPEL: He's talking about
2 comparing 904 with 924.

3 THE WITNESS: If you're asking
4 does this name appear here, this name, as far
5 as I can see, does not appear here. But I
6 don't know if that means this event isn't
7 there. That's all I'm trying to say.

8 BY MR. TOSCANO:

9 Q But, in any event, you never
10 checked when you were undertaking this
11 analysis. Correct?

12 A No, but I wanted a very long list
13 of top rated events.

14 Q But, in fact, you got a list that
15 didn't have the FBR Open. Right?

16 A Nothing under that name.

17 Q Okay. And you got a list that
18 didn't have AT&T Pebble Beach National Pro Am.
19 Right?

20 A Under that name, that's right.

21 Q Okay. And you didn't get a list
22 that has World Golf Championship, CA

1 Championship. Right? That would be one, two,
2 three, four, five down from Pebble Beach.
3 Right?

4 A I will take your word for it. I
5 would have to do a comparison here, which on
6 the fly is rather hard to do, obviously.

7 Q So, you would agree, though, that
8 the list of PGA events that Tennis Channel
9 provided to you in connection with this
10 analysis was incomplete. Right?

11 A I don't think I was saying that
12 was I using the top rated events in an
13 absolute sense. I think what I said was I'm
14 using top rated events, which means I want
15 major events, a long list of major events on
16 both of these networks, excluding none at the
17 very top, obviously, but it may exclude some
18 that are down the list somewhere. So, if I
19 had done what you're suggesting, which is a
20 different analysis, which is go back --
21 presumably, have to calculate every event all
22 year long to find out which ones were the top.

1 Q Mr. Brooks, don't you represent in
2 your written testimony, I'll give you the
3 paragraph, we're on page 11.

4 A Yes.

5 Q Paragraph 21, the one, two, third
6 sentence.

7 A Yes.

8 Q Don't you say for Golf Channel,
9 "The most popular telecasts were PGA events."

10 A Yes, as a general statement that
11 is true.

12 Q But you didn't consider all the
13 PGA events in your analysis. Right?

14 A What I said is the most popular
15 telecast for PGA. And I think that's true.
16 And later on in that same paragraph I say,
17 "Each network's best events with the other's
18 best events." That's what I was after.

19 Q But you would agree that because
20 the list of PGA events that the Tennis Channel
21 provided to you was incomplete your analysis,
22 in fact, left out many of the highest rated

1 PGA tour events on Golf Channel during that
2 time period. Right?

3 A No, I didn't see a bias between
4 them that way.

5 MR. TOSCANO: Your Honor, may I
6 approach?

7 JUDGE SIPPEL: You may.

8 MR. TOSCANO: This has been marked
9 as Comcast Exhibit 931, not yet in evidence.

10 JUDGE SIPPEL: So identified as
11 Comcast 931 for identification.

12 (WHEREUPON, THE AFOREMENTIONED
13 DOCUMENT WAS MARKED COMCAST
14 EXHIBIT 931 FOR IDENTIFICATION.)

15 MR. SCHMIDT: Has this been
16 produced yet?

17 MR. TOSCANO: This has not been
18 produced. This is publicly available data.
19 This is Nielsen data.

20 (Simultaneous speech.)

21 MR. SCHMIDT: Are publicly
22 available and that's our stipulation, is that

1 it's not publicly available.

2 MR. TOSCANO: Well, we're not yet
3 seeking to admit this. We're simply using --

4 MR. SCHMIDT: I just would like to
5 note for the record that this is the second
6 set of data today that we've been given for
7 the first time at the hearing. We don't
8 object to you using it, but I'd like to note
9 that for the record, Your Honor.

10 JUDGE SIPPEL: Is this just in
11 another format, or is this -- you haven't seen
12 this material at all any place?

13 MR. TOSCANO: Well, this --

14 JUDGE SIPPEL: I'm asking Mr.
15 Schmidt.

16 MR. SCHMIDT: That is the question
17 I have for Mr. Toscano. If it's being
18 produced in a different format, then I'll
19 withdraw my comment. But I thought what you
20 said was that it had not been produced in a
21 different format.

22 MR. TOSCANO: This has not been

1 produced. This is to use on cross-examination
2 to complete the data. In fact, the exhibit
3 that Mr. Brooks put in that is, in fact,
4 incomplete, this is additional data that he
5 left out, Comcast Exhibit 924. This includes
6 additional data that he left out of Exhibit
7 924. So, again, we're putting this in for
8 completeness. And this is data that I think
9 Mr. Schmidt would agree that Tennis Channel
10 has access to through Nielsen.

11 MR. SCHMIDT: I'm not sure whether
12 I agree or disagree with that. I just don't
13 know the factual basis --

14 JUDGE SIPPEL: Whether you do or
15 not, it doesn't make really much difference.
16 Let's get the question before the witness.

17 BY MR. TOSCANO:

18 Q Mr. Brooks, do you recognize this
19 as a list of the top rated PGA events on Golf
20 Channel during the first nine months of 2009?

21 A It is a national rating list of
22 p from a national service which I never used

1 anywhere in my report of, according to that
2 service, what top rated events were.

3 Q But you do recognize, again, that
4 using national ratings, that this is a list of
5 the top rated PGA events on Golf Channel
6 during the first nine months of 2009. Right?

7 A You said I left it out from my
8 analysis, and this is not part of my analysis.
9 As I explained earlier, I did not have access,
10 nor does the Tennis Channel, to national
11 Nielsen numbers, which these are.

12 Q But you purported to analyze the
13 top rated PGA events on Golf Channel during
14 the first three quarters of 2009. Correct?

15 A In the 48 markets. That's not
16 this.

17 Q So, you never even considered
18 looking at what the actual top rated events
19 were according to Nielsen national ratings.
20 Is that your testimony?

21 A Not national, that's correct.
22 That would not be apples-to-apples.

1 Q Okay.

2 A This is only Golf, not Tennis.

3 Q Okay. Well, since you're
4 testifying as an expert, let me ask you to
5 assume that these are the top rated Nielsen
6 events, I'm sorry, top rated PGA events on
7 Golf Channel according to the Nielsen national
8 ratings that you've recognized are in that
9 exhibit.

10 A I'll accept that assumption.

11 Q Okay. Now --

12 JUDGE SIPPEL: Again, this is on
13 931.

14 MR. TOSCANO: Yes. Now we're
15 looking at 931.

16 JUDGE SIPPEL: You just made a
17 characterization of the document. I'm
18 assuming that characterization applied to 931,
19 or am I wrong?

20 MR. TOSCANO: Yes, the
21 characterization I just made applied to 931.

22 JUDGE SIPPEL: Thank you.

1 BY MR. TOSCANO:

2 Q Mr. Brooks, do you see that the
3 highest rated PGA Tour event on Golf
4 Channel during that time period was the 2009
5 Quail Hollow Championship broadcast on May
6 3rd, 2009. Do you see that?

7 A On a national basis, yes.

8 Q Does that show up in your list,
9 Comcast Exhibit 924, of top rated events on
10 Golf Channel or Tennis Channel?

11 A There is something called Quail
12 Hollow Championships. It's in the middle
13 column, four down.

14 Q Right. And that's the one that
15 was broad -- that was the broadcast on May
16 1st. Correct?

17 A Well, I'm looking at this for the
18 first time, so you're pointing out the May 3rd
19 Quail Hollow. So, your question is whether
20 there's a May 3rd Quail Hollow. This is the
21 30th of April, and the 1st of May. Well,
22 there's two questions I'd have there, and that